Reprinted
March 28, 2003

ENGROSSED
HOUSE BILL No. 1368

DIGEST OF HB 1368 (Updated March 27, 2003 3:09 PM - DI 87)

Citations Affected: IC 6-4.1; IC 29-1; noncode.

Synopsis: Share of subsequent childless spouse. Provides that a subsequent childless spouse of a person who dies after June 30, 2003, receives an intestate share or an elective share in an amount equal to 25% of the fair market value of the lands of the deceased. Provides that in determining "net estate" for purposes of the intestate or elective share, death taxes are not subtracted from the total estate to determine the net estate. Provides that a court order describing the fair market value of the estate is confidential. Specifies that a will must be executed by the signature of the testator and two witnesses on a will or self-proving clause. Repeals a provision concerning the portion of the estate a widow receives free from claims by creditors.

Effective: Upon passage; July 1, 2003.

Foley, Weinzapfel
(SENATE SPONSOR — BRAY)

January 14, 2003, read first time and referred to Committee on Judiciary.
January 30, 2003, amended, reported — Do Pass.
February 3, 2003, read second time, ordered engrossed. Engrossed.
February 4, 2003, read third time, passed. Yeas 92, nays 1.

SENATE ACTION
February 11, 2003, read first time and referred to Committee on Judiciary.
March 20, 2003, amended, reported favorably — Do Pass.
March 27, 2003, read second time, amended, ordered engrossed.

Reprinted
March 28, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

ENGROSSED
HOUSE BILL No. 1368

A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-4.1-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) After the hearing required by section 9 of this chapter, the probate court shall determine the fair market value of the property interests transferred by the resident decedent and the amount of inheritance tax due as a result of his death. The court shall then enter an order stating the amount of inheritance tax due and the fees due witnesses under section 4 of this chapter. If the court finds that no inheritance tax is due, the court shall include a statement to that effect in the order.

(b) The court shall prepare the order required by this section on the form prescribed by the department of state revenue. The court shall include in the order a description of all Indiana real property owned by the resident decedent at the time of his death. The probate court shall spread the order of record in the office of the clerk of the circuit court. The clerk shall maintain the orders in a looseleaf ledger.

(c) The order described in this section is confidential.

SECTION 2. IC 29-1-1-3 IS AMENDED TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2003]: Sec. 3. **(a)** The **following** definitions ~~and rules of construction appearing in this section~~ apply throughout this article, unless otherwise apparent from the context:

(1) "Child" includes an adopted child but does not include a grandchild or other more remote descendants, nor, except as provided in IC 29-1-2-5, a child born out of wedlock.

(2) "Claims" includes liabilities of a decedent which survive, whether arising in contract or in tort or otherwise, funeral expenses, the expense of a tombstone, expenses of administration, and all ~~inheritance taxes imposed under IC 6-4.1.~~ **taxes imposed by reason of the person's death. However, for purposes of IC 29-1-2-1 and IC 29-1-3-1, the term does not include taxes imposed by reason of the person's death.**

(3) "Court" means the court having probate jurisdiction.

(4) "Decedent" means one who dies testate or intestate.

(5) "Devise" or "legacy", when used as a noun, means a testamentary disposition of either real or personal property or both.

(6) "Devise", when used as a verb, means to dispose of either real or personal property or both by will.

(7) "Devisee" includes legatee, and "legatee" includes devisee.

(8) "Distributee" denotes those persons who are entitled to the real and personal property of a decedent under a will, under the statutes of intestate succession, or under IC 29-1-4-1.

(9) "Estate" denotes the real and personal property of the decedent or protected person, as from time to time changed in form by sale, reinvestment, or otherwise, and augmented by any accretions and additions thereto and substitutions therefor and diminished by any decreases and distributions therefrom.

(10) "Fiduciary" includes a:

~~(1)~~ **(A)** personal representative;

~~(2)~~ **(B)** guardian;

~~(3)~~ **(C)** conservator;

~~(4)~~ **(D)** trustee; and

~~(5)~~ **(E)** person designated in a protective order to act on behalf of a protected person.

(11) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate, unless otherwise defined or limited by the will.

(12) "Incapacitated" has the meaning set forth in IC 29-3-1-7.5.

(13) "Interested persons" means heirs, devisees, spouses,

creditors, or any others having a property right in or claim against the estate of a decedent being administered. This meaning may vary at different stages and different parts of a proceeding and must be determined according to the particular purpose and matter involved.

(14) "Issue" of a person, when used to refer to persons who take by intestate succession, includes all lawful lineal descendants except those who are lineal descendants of living lineal descendants of the intestate.

(15) "Lease" includes an oil and gas lease or other mineral lease.

(16) "Letters" includes letters testamentary, letters of administration, and letters of guardianship.

(17) "Minor" or "minor child" or "minority" refers to any person under the age of eighteen (18) years.

(18) "Mortgage" includes deed of trust, vendor's lien, and chattel mortgage.

(19) "Net estate" refers to the real and personal property of a decedent ~~exclusive of~~ **less** the allowances provided under IC 29-1-4-1 and enforceable claims against the estate.

(20) "Person" includes natural persons and corporations.

(21) "Personal property" includes interests in goods, money, choses in action, evidences of debt, and chattels real.

(22) "Personal representative" includes executor, administrator, administrator with the will annexed, administrator de bonis non, and special administrator.

(23) "Property" includes both real and personal property.

(24) "Protected person" has the meaning set forth in IC 29-3-1-13.

(25) "Real property" includes estates and interests in land, corporeal or incorporeal, legal or equitable, other than chattels real.

(26) "Will" includes all wills, testaments, and codicils. The term also includes a testamentary instrument which merely appoints an executor or revokes or revives another will.

(b) The following rules of construction apply throughout this article unless otherwise apparent from the context:

(1) The singular number includes the plural and the plural number includes the singular.

(2) The masculine gender includes the feminine and neuter.

SECTION 3. IC 29-1-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) The ~~net~~ estate of a person dying intestate shall descend and be distributed as provided in this section.

(b) Except as otherwise provided in subsection (c), the surviving spouse shall receive the following share:

(1) One-half (1/2) of the net estate if the intestate is survived by at least one (1) child or by the issue of at least one (1) deceased child.

(2) Three-fourths (3/4) of the net estate, if there is no surviving issue, but the intestate is survived by one (1) or both of the intestate's parents.

(3) All of the net estate, if there is no surviving issue or parent.

(c) If the surviving spouse is a second or other subsequent spouse who did not at any time have children by the decedent, and the decedent left surviving him a child or children or the descendants of a child or children by a previous spouse, such surviving second or subsequent childless spouse shall take only ~~a life estate in one-third (1/3)~~ **an amount equal to twenty-five percent (25%) of the fair market value as of the date of death** of the lands of the deceased spouse, and the fee shall, at the decedent's death, vest at once in such child or children, or the descendants of such as may be dead. ~~subject only to the life estate of the surviving spouse.~~ Such second or subsequent childless spouse shall, however, receive the same share of the personal property of the decedent as is provided in subsection (b) with respect to surviving spouses generally.

(d) The share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, shall descend and be distributed as follows:

(1) To the issue of the intestate, if they are all of the same degree of kinship to the intestate, they shall take equally; or if of unequal degree, then those of more remote degrees shall take by representation.

(2) If there is a surviving spouse but no surviving issue of the intestate, then to the surviving parents of the intestate.

(3) If there is no surviving spouse or issue of the intestate, then to the surviving parents, brothers, and sisters, and the issue of deceased brothers and sisters of the intestate. Each living parent of the intestate shall be treated as of the same degree as a brother or sister and shall be entitled to the same share as a brother or sister. However, the share of each parent shall be not less than one-fourth (1/4) of such net estate. Issue of deceased brothers and sisters shall take by representation.

(4) If there is no surviving parent or brother or sister of the intestate, then to the issue of brothers and sisters. If such distributees are all in the same degree of kinship to the intestate,

they shall take equally or, if of unequal degree, then those of more remote degrees shall take by representation.

(5) If there is no surviving issue or parent of the intestate or issue of a parent, then to the surviving grandparents of the intestate equally.

(6) If there is no surviving issue or parent or issue of a parent, or grandparent of the intestate, then the estate of the decedent shall be divided into that number of shares equal to the sum of:

(A) the number of brothers and sisters of the decedent's parents surviving the decedent; plus

(B) the number of deceased brothers and sisters of the decedent's parents leaving issue surviving both them and the decedent; and

one (1) of the shares shall pass to each of the brothers and sisters of the decedent's parents or their respective issue per stirpes.

(7) If interests in real estate go to a husband and wife under this subsection, the aggregate interests so descending shall be owned by them as tenants by the entireties. Interests in personal property so descending shall be owned as tenants in common.

(8) If there is no person mentioned in subdivisions (1) through (7), then to the state.

SECTION 4. IC 29-1-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) When a married individual dies testate as to any part of the individual's estate, the surviving spouse is entitled to take against the will under the limitations and conditions stated in this chapter. The surviving spouse, upon electing to take against the will, is entitled to one-half (1/2) of the net personal and real estate of the testator. However, if the surviving spouse is a second or other subsequent spouse who did not at any time have children by the decedent and the decedent left surviving a child or children or the descendants of a child or children by a previous spouse, the surviving second or subsequent childless spouse shall upon such election take one-third (1/3) of the net personal estate of the testator plus ~~a life estate in one-third (1/3)~~ **an amount equal to twenty-five percent (25%) of the fair market value as of the date of death** of the lands of the testator. In determining the net estate of a deceased spouse for the purpose of computing the amount due the surviving spouse electing to take against the will, the court shall consider only such property as would have passed under the laws of descent and distribution.

(b) When the value of the property given the surviving spouse under the will is less than the amount the surviving spouse would receive by electing to take against the will, the surviving spouse may elect to

retain any or all specific bequests or devises given to the surviving spouse in the will at their fair market value as of the time of the decedent's death and receive the balance due in cash or property.

(c) Except as provided in subsection (b), in electing to take against the will, the surviving spouse is deemed to renounce all rights and interest of every kind and character in the personal and real property of the deceased spouse, and to accept the elected award in lieu thereof.

(d) When a surviving spouse elects to take against the will, the surviving spouse shall be deemed to take by descent, as a modified share, the part of the net estate as does not come to the surviving spouse by the terms of the will. Where by virtue of an election pursuant to this chapter it is determined that the surviving spouse has renounced the surviving spouse's rights in any devise, either in trust or otherwise, the will shall be construed with respect to the property so devised to the surviving spouse as if the surviving spouse had predeceased the testator.

SECTION 5. IC 29-1-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. When a surviving spouse makes no election to take against the will, he shall receive the benefit of all provisions in his favor in the will, if any, and shall share as heir, in accordance with IC 29-1-2-1, ~~and IC 29-1-2-2,~~ in any estate undisposed of by the will. The surviving spouse is not entitled to take any share against the will by virtue of the fact that the testator made no provisions for him therein, except as he shall elect pursuant to IC 29-1. By taking under the will or consenting thereto, he does not waive his right to the allowance, unless it clearly appears from the will that the provision therein made for him was intended to be in lieu of that right.

SECTION 6. IC 29-1-5-3, AS AMENDED BY HEA 1116-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) This section applies to a will executed before, on, or after July 1, 2003. A will, other than a nuncupative will, ~~may~~ **must** be ~~attested~~ **executed** by the signature of the testator and of at least two (2) witnesses on: ~~one (1) of the following:~~

(1) a will under subsection (b);

(2) a self-proving clause under section 3.1(c) of this chapter; **or**

(3) a self-proving clause under section 3.1(d) of this chapter.

(b) A will may be attested as follows:

(1) The testator, in the presence of two (2) or more attesting witnesses, shall signify to the witnesses that the instrument is the testator's will and either:

(A) sign the will;

(B) acknowledge the testator's signature already made; or

(C) at the testator's direction and in the testator's presence have someone else sign the testator's name.

(2) The attesting witnesses must sign in the presence of the testator and each other.

An attestation or self-proving clause is not required under this subsection for a valid will.

(c) A will that is executed substantially in compliance with subsection (b) will not be rendered invalid by the existence of:

(1) an attestation or self-proving clause or other language; or

(2) additional signatures;

not required by subsection (b).

(d) A will executed in accordance with subsection (b) is self-proved if the witness signatures follow an attestation or self-proving clause or other declaration indicating in substance the facts set forth in section 3.1(c) or 3.1(d) of this chapter.

(e) This section shall be construed in favor of effectuating the testator's intent to make a valid will.

SECTION 7. IC 29-1-2-2 IS REPEALED [EFFECTIVE JULY 1, 2003].

SECTION 8. [EFFECTIVE JULY 1, 2003] **IC 29-1-2-1, IC 29-1-3-1, and IC 29-1-3-7, all as amended by this act, apply only to the estate of an individual who dies after June 30, 2003.**

SECTION 9. [EFFECTIVE UPON PASSAGE] **(a) Notwithstanding IC 29-1-5-3, IC 29-1-5-6, and IC 29-1-5-9, this SECTION applies to a will executed before, on, or after July 1, 2003. A will, other than a nuncupative will must be executed by the signature of the testator and of at least two (2) witnesses on:**

(1) a will under subsection (b);

(2) a self-proving clause under SECTION 9(c) of this act; or

(3) a self-proving clause under SECTION 9(d) of this act.

(b) A will may be attested as follows:

(1) The testator, in the presence of two (2) or more attesting witnesses, shall signify to the witnesses that the instrument is the testator's will and either:

(A) sign the will;

(B) acknowledge the testator's signature already made; or

(C) at the testator's direction and in the testator's presence have someone else sign the testator's name.

(2) The attesting witnesses must sign in the presence of the testator and each other.

An attestation or self-proving clause is not required under this subsection for a valid will.

(c) A will that is executed substantially in compliance with subsection (b) will not be rendered invalid by the existence of:

(1) an attestation or self-proving clause or other language; or

(2) additional signatures;

not required by subsection (b).

(d) A will executed in accordance with subsection (b) is self-proved if the witness signatures follow an attestation or self-proving clause or other declaration indicating in substance the facts set forth in SECTION 9(c) or 9(d) of this act.

(e) This SECTION shall be construed in favor of effectuating the testator's intent to make a valid will.

(f) This SECTION expires July 1, 2003.

SECTION 10. [EFFECTIVE UPON PASSAGE] **(a) Notwithstanding IC 29-1-5-3, IC 29-1-5-6, and IC 29-1-5-9, this SECTION applies to a will executed before, on, or after July 1, 2003. When a will is executed, the will may be:**

(1) attested; and

(2) made self-proving;

by incorporating into or attaching to the will a self-proving clause that meets the requirements of subsection (c) or (d). If the testator and witnesses sign a self-proving clause that meets the requirements of subsection (c) or (d) at the time the will is executed, no other signatures of the testator and witnesses are required for the will to be validly executed and self-proved.

(b) If a will is executed by the signatures of the testator and witnesses on an attestation clause under SECTION 8(b) of this act, the will may be made self-proving at a later date by attaching to the will a self-proving clause signed by the testator and witnesses that meets the requirements of subsection (c) or (d).

(c) A self-proving clause must contain the acknowledgment of the will by the testator and the statements of the witnesses, each made under the laws of Indiana and evidenced by the signatures of the testator and witnesses (which may be made under the penalties for perjury) attached or annexed to the will in form and content substantially as follows:

We, the undersigned testator and the undersigned witnesses, respectively, whose names are signed to the attached or foregoing instrument declare:

(1) that the testator executed the instrument as the testator's will;

(2) that, in the presence of both witnesses, the testator signed or acknowledged the signature already made or directed

another to sign for the testator in the testator's presence;

(3) that the testator executed the will as a free and voluntary act for the purposes expressed in it;

(4) that each of the witnesses, in the presence of the testator and of each other, signed the will as a witness;

(5) that the testator was of sound mind when the will was executed; and

(6) that to the best knowledge of each of the witnesses the testator was, at the time the will was executed, at least eighteen (18) years of age or was a member of the armed forces or of the merchant marine of the United States or its allies.

_____
Testator

____ **_____**
Date **Witness**

_____
Witness

(d) A will is attested and self-proved if the will includes or has attached a clause signed by the testator and the witnesses that indicates in substance that:

(1) the testator signified that the instrument is the testator's will;

(2) in the presence of at least two (2) witnesses, the testator signed the instrument or acknowledged the testator's signature already made or directed another to sign for the testator in the testator's presence;

(3) the testator executed the instrument freely and voluntarily for the purposes expressed in it;

(4) each of the witnesses, in the testator's presence and in the presence of all other witnesses, is executing the instrument as a witness;

(5) the testator was of sound mind when the will was executed; and

(6) the testator is, to the best of the knowledge of each of the witnesses, either:

(A) at least eighteen (18) years of age; or

(B) a member of the armed forces or the merchant marine of the United States or its allies.

(e) This SECTION shall be construed in favor of effectuating the testator's intent to make a valid will.

(f) This SECTION expires July 1, 2003.

SECTION 11. [EFFECTIVE UPON PASSAGE] **(a) Notwithstanding IC 29-1-5-6, no will in writing, nor any part thereof, except as in this article provided, shall be revoked, unless the testator, or some other person in his presence and by his direction, with intent to revoke, shall destroy or mutilate the same; or such testator shall execute other writing for that purpose, signed, subscribed and attested as required in SECTION 8 or 9 of this act. A will can be revoked in part only by the execution of a writing as herein provided. And if, after the making of any will, the testator shall execute a second, a revocation of the second shall not revive the first will, unless it shall appear by the terms of such revocation to have been his intent to revive it, or, unless, after such revocation, he shall duly republish the previous will.**

(b) This SECTION expires July 1, 2003.

SECTION 12. [EFFECTIVE UPON PASSAGE] **(a) Notwithstanding IC 29-1-5-9, an instrument creating an inter vivos trust in order to be valid need not be executed as a testamentary instrument pursuant to SECTION 8 or 9 of this act, even though such trust instrument reserves to the maker or settlor the power to revoke, or the power to alter or amend, or the power to control investments, or the power to consume the principal, or because it reserves to the maker or settlor any one or more of said powers.**

(b) This SECTION expires July 1, 2003.

SECTION 13. **An emergency is declared for this act**.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1368, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 8, delete "the following:".

Page 1, line 9, delete "(A) Except as provided in clause (B),".

Page 1, run in lines 8 through 9.

Page 1, line 14, after "death." insert "**However, for purposes of IC 29-1-2-1 and IC 29-1-3-1, the term does not include taxes imposed by reason of the person's death.**".

Page 1, delete lines 15 through17.

Page 2, delete line 1.

Page 4, line 4, delete "appraised" and insert "**fair market**".

Page 4, line 4, after "value" insert "**as of the date of death**".

Page 5, line 23, delete "appraised" and insert "**fair market**".

Page 5, line 23, after "value" insert "**as of the date of death**".

and when so amended that said bill do pass.

(Reference is to HB 1368 as introduced.)

LAWSON L, Chair

Committee Vote: yeas 13, nays 0.

COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred House Bill No. 1368, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-4.1-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) After the hearing required by section 9 of this chapter, the probate court shall determine the fair market value of the property interests transferred by the resident decedent and the amount of inheritance tax due as a result of his death. The court shall then enter an order stating the amount of inheritance tax due and the fees due witnesses under section 4 of this chapter. If the court finds that no inheritance tax is due, the court shall include a statement to that effect in the order.

(b) The court shall prepare the order required by this section on the form prescribed by the department of state revenue. The court shall include in the order a description of all Indiana real property owned by the resident decedent at the time of his death. The probate court shall spread the order of record in the office of the clerk of the circuit court. The clerk shall maintain the orders in a looseleaf ledger.

(c) The order described in this section is confidential.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1368 as printed January 31, 2003.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

SENATE MOTION

Mr. President: I move that Engrossed House Bill 1368 be amended to read as follows:

Page 6, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 6. IC 29-1-5-3, AS AMENDED BY HEA 1116-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) This section applies to a will executed before, on, or after July 1, 2003. A will, other than a nuncupative will, ~~may~~ **must** be ~~attested~~ **executed** by the signature of the testator and of at least two (2) witnesses on: ~~one (1) of the following:~~

(1) a will under subsection (b);

(2) a self-proving clause under section 3.1(c) of this chapter; **or**

(3) a self-proving clause under section 3.1(d) of this chapter.

(b) A will may be attested as follows:

(1) The testator, in the presence of two (2) or more attesting witnesses, shall signify to the witnesses that the instrument is the testator's will and either:

(A) sign the will;

(B) acknowledge the testator's signature already made; or

(C) at the testator's direction and in the testator's presence have someone else sign the testator's name.

(2) The attesting witnesses must sign in the presence of the testator and each other.

An attestation or self-proving clause is not required under this subsection for a valid will.

(c) A will that is executed substantially in compliance with subsection (b) will not be rendered invalid by the existence of:

(1) an attestation or self-proving clause or other language; or

(2) additional signatures;

not required by subsection (b).

(d) A will executed in accordance with subsection (b) is self-proved if the witness signatures follow an attestation or self-proving clause or other declaration indicating in substance the facts set forth in section 3.1(c) or 3.1(d) of this chapter.

(e) This section shall be construed in favor of effectuating the testator's intent to make a valid will.".

Renumber all SECTIONS consecutively.

(Reference is to EHB 1368 as printed March 21, 2003.)

BRAY

SENATE MOTION

Mr. President: I move that Engrossed House Bill 1368 be amended to read as follows:

Page 6, after line 32, begin a new paragraph and insert:

"SECTION 8. [EFFECTIVE UPON PASSAGE] **(a) Notwithstanding IC 29-1-5-3, IC 29-1-5-6, and IC 29-1-5-9, this SECTION applies to a will executed before, on, or after July 1, 2003. A will, other than a nuncupative will must be executed by the signature of the testator and of at least two (2) witnesses on:**

(1) a will under subsection (b);

(2) a self-proving clause under SECTION 9(c) of this act; or

(3) a self-proving clause under SECTION 9(d) of this act.

(b) A will may be attested as follows:

(1) The testator, in the presence of two (2) or more attesting witnesses, shall signify to the witnesses that the instrument is the testator's will and either:

(A) sign the will;

(B) acknowledge the testator's signature already made; or

(C) at the testator's direction and in the testator's presence have someone else sign the testator's name.

(2) The attesting witnesses must sign in the presence of the testator and each other.

An attestation or self-proving clause is not required under this subsection for a valid will.

(c) A will that is executed substantially in compliance with subsection (b) will not be rendered invalid by the existence of:

(1) an attestation or self-proving clause or other language; or

(2) additional signatures;

not required by subsection (b).

(d) A will executed in accordance with subsection (b) is self-proved if the witness signatures follow an attestation or self-proving clause or other declaration indicating in substance the facts set forth in SECTION 9(c) or 9(d) of this act.

(e) This SECTION shall be construed in favor of effectuating the testator's intent to make a valid will.

(f) This SECTION expires July 1, 2003.

SECTION 9. [EFFECTIVE UPON PASSAGE] **(a) Notwithstanding IC 29-1-5-3, IC 29-1-5-6, and IC 29-1-5-9, this SECTION applies to a will executed before, on, or after July 1, 2003. When a will is executed, the will may be:**

(1) attested; and

(2) made self-proving;

by incorporating into or attaching to the will a self-proving clause that meets the requirements of subsection (c) or (d). If the testator and witnesses sign a self-proving clause that meets the requirements of subsection (c) or (d) at the time the will is executed, no other signatures of the testator and witnesses are required for the will to be validly executed and self-proved.

(b) If a will is executed by the signatures of the testator and witnesses on an attestation clause under SECTION 8(b) of this act, the will may be made self-proving at a later date by attaching to the will a self-proving clause signed by the testator and witnesses that meets the requirements of subsection (c) or (d).

(c) A self-proving clause must contain the acknowledgment of the will by the testator and the statements of the witnesses, each made under the laws of Indiana and evidenced by the signatures of the testator and witnesses (which may be made under the penalties for perjury) attached or annexed to the will in form and content substantially as follows:

We, the undersigned testator and the undersigned witnesses, respectively, whose names are signed to the attached or foregoing instrument declare:

(1) that the testator executed the instrument as the testator's will;

(2) that, in the presence of both witnesses, the testator signed or acknowledged the signature already made or directed another to sign for the testator in the testator's presence;

(3) that the testator executed the will as a free and voluntary act for the purposes expressed in it;

(4) that each of the witnesses, in the presence of the testator and of each other, signed the will as a witness;

(5) that the testator was of sound mind when the will was executed; and

(6) that to the best knowledge of each of the witnesses the testator was, at the time the will was executed, at least eighteen (18) years of age or was a member of the armed forces or of the merchant marine of the United States or its allies.

_____
Testator

____ **_____**
Date **Witness**

_____
Witness

(d) A will is attested and self-proved if the will includes or has attached a clause signed by the testator and the witnesses that indicates in substance that:

(1) the testator signified that the instrument is the testator's will;

(2) in the presence of at least two (2) witnesses, the testator signed the instrument or acknowledged the testator's signature already made or directed another to sign for the testator in the testator's presence;

(3) the testator executed the instrument freely and voluntarily for the purposes expressed in it;

(4) each of the witnesses, in the testator's presence and in the presence of all other witnesses, is executing the instrument as a witness;

(5) the testator was of sound mind when the will was executed; and

(6) the testator is, to the best of the knowledge of each of the witnesses, either:

(A) at least eighteen (18) years of age; or

(B) a member of the armed forces or the merchant marine of the United States or its allies.

(e) This SECTION shall be construed in favor of effectuating the testator's intent to make a valid will.

(f) This SECTION expires July 1, 2003.

SECTION 10. [EFFECTIVE UPON PASSAGE] **(a) Notwithstanding IC 29-1-5-6, no will in writing, nor any part thereof, except as in this article provided, shall be revoked, unless the testator, or some other person in his presence and by his direction, with intent to revoke, shall destroy or mutilate the same; or such testator shall execute other writing for that purpose, signed, subscribed and attested as required in SECTION 8 or 9 of this act. A will can be revoked in part only by the execution of a writing as herein provided. And if, after the making of any will, the testator shall execute a second, a revocation of the second shall not revive the first will, unless it shall appear by the terms of such revocation to have been his intent to revive it, or, unless, after such revocation, he shall duly republish the previous will.**

(b) This SECTION expires July 1, 2003.

SECTION 11. [EFFECTIVE UPON PASSAGE] **(a) Notwithstanding IC 29-1-5-9, an instrument creating an inter vivos trust in order to be valid need not be executed as a testamentary instrument pursuant to SECTION 8 or 9 of this act, even though**

such trust instrument reserves to the maker or settlor the power to revoke, or the power to alter or amend, or the power to control investments, or the power to consume the principal, or because it reserves to the maker or settlor any one or more of said powers.

(b) This SECTION expires July 1, 2003.

SECTION 12. **An emergency is declared for this act**.".

Renumber all SECTIONS consecutively.

(Reference is to EHB 1368 as printed March 21, 2003.)

LANANE